



POLICE DEPARTMENT  
NEW YORK, N.Y. 10038  
DEPUTY COMMISSIONER - TRIALS

MEMORANDUM FOR: Police Commissioner

February 5, 2013

Re: Police Officer Mario Lora  
Tax Registry No. 922666  
Transit Bureau Special Operations District  
Disciplinary Case No. 2010 2021  
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The above named member of the Department appeared before me on September 14, 2012, charged with the following:

1. Police Officer Mario Lora, while assigned to Transit Bureau, Special Operations District, on or about November 18, 2009, at approximately 1115 hours, while in the Transit Bureau, Special Operations District – Citywide Anti-Gang Enforcement Unit's roll-call room, was discourteous to Sergeant Special Assignment Nimrod Ollivierre. (*As amended*)

P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT GENERAL

The Department was represented by David Bernstein, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Nimrod Ollivierre, Police Officer Patronel Nath, and Osbert Boakye as witnesses.

Lieutenant Nimrod Ollivierre

Ollivierre is a 15-year member of the Department and is currently assigned to the 10 Precinct. From 2007 to 2012, Ollivierre was assigned to the Transit Bureau as an Impact and a City-Wide Anti-Gang Enforcement Unit (CAGE) sergeant. He said CAGE falls under the Transit Bureau Special Operations Division, and that CAGE members patrol the subway system in plainclothes and address gang conditions that occur in the transit system. He was assigned to CAGE from 2008 to 2012.

Ollivierre stated that he was working on November 18, 2009, and conducted roll call inside a room at a transit facility on 40 Street and Eighth Avenue. The room consisted of about eight desks with computers on them and there were probably nine to ten people at roll call. While conducting roll call, Respondent interrupted Ollivierre and stated:

I was not - - at roll call yesterday, but my partner informed me that you stated you don't want TOS [theft of service] collars, but I observed two officers made TOS collars and did you address them...

I know you didn't talk to them because they are your favorites. Just like when Crandell was here, Cookie and Pablo was his favorite, but - but I know you didn't...I know you didn't address it...when I got something to say, I don't give a damn, I'll say what's on my mind.

Ollivierre informed Respondent that they could talk after roll call, but Respondent continued talking and the tone of his voice was “very confrontational,” “annoyed” and “angry.” He said Respondent was speaking in a loud tone of voice while he himself spoke in a calm manner. Ollivierre was shocked that Respondent was trying to address something from the day before for a matter he was not present for. Ollivierre was in the back of the room, about ten feet from Respondent when the exchange between them occurred.

Ollivierre explained that Crandell was the supervisor that he replaced in the unit. He testified, “Theft of service is you enter the transit system and avoid paying your fare to gain entry into the system to ride the train.” Ollivierre stated after roll call he spoke with Respondent and told him that what he did was “not nice. It was not pleasant. He said he knew he was wrong, and at that point, I informed him that he would be in uniform for the rest of the week.” Ollivierre explained that this was “soft punishment because you will be working for yourself. You wouldn’t have a partner. You will be riding the train in uniform as opposed to plain clothes with a partner.”

Prior to the roll call incident, Ollivierre described his relationship with Respondent as a “good working relationship,” where at times he would ask Respondent for advice because he was one of the older members of the unit and had a vast knowledge of how things operated. Being the supervisor of CAGE, Ollivierre testified that he conducted annual evaluations of Respondent. In the year that encompassed the roll call incident, from December 2008 to December 2009, as well as in the time period covering December 2009 through December 2010, Ollivierre rated Respondent highly competent with an overall evaluation of a 4.5 out of 5. Prior to Respondent’s interruption at roll

call, Ollivierre said he was giving out assignments, he had not opened up the floor for questions and Respondent did not raise his hand before speaking.

During cross-examination, Ollivierre denied that two days before the roll call incident, Police Officer Mario Vasquez and Respondent had an issue with an arrest and a false affidavit being prepared. He admitted Respondent and Vasquez usually work together when they were in plainclothes and had been partners for about a year when the incident occurred. He agreed there were about nine people at roll call which included: Respondent, Vasquez, Salmon, Pena, Adrien, Aquino, Nath and Best.

Ollivierre acknowledged that the room where roll call was conducted was 20 by 30 feet and only uniformed members of the service were present. He agreed roll call can last five to 20 minutes and on November 18, 2009, he conducted unit training on warrant checks. Ollivierre noted warrant checks are conducted when officers take enforcement action. He denied he told officers to avoid writing summonses or making arrests for TOS because as part of CAGE, the officers "should be riding the trains." Ollivierre acknowledged that CAGE officers ride the trains and the assignments at roll call are given out as "train rides." He agreed that if a crime, including theft of service, is committed in an officer's presence, it should be addressed.

According to Ollivierre, while in the middle of conducting roll call, Respondent started to question him. He acknowledged that he did not call the duty captain on the Respondent for interrupting him and being discourteous to a supervisor. He agreed that this interruption occurred in front of other officers, including Vasquez, Salmon and Best, who were all deemed fit for duty by Ollivierre at the time. Ollivierre admitted, in regard to the officers present in the room for roll call, none of them had any hearing or vision

problems that he was aware of and they were in plainclothes. At the end of roll call, if time permitted, sometimes Ollivierre would see if there were any questions from the members he just conducted roll call with. If a question was asked, the person would raise his or her hand or say, "Sarge, I have a question."

Ollivierre agreed he was in the middle of roll call when Respondent had a question. He admitted that he never addressed Respondent's question after roll call because he did not have time. The following morning, Ollivierre informed Respondent that he was going to be in uniform. After the roll call incident, Ollivierre agreed he spoke to the Integrity Control Officer (ICO) about what happened and the only officer who said anything to him about the incident was Best. Ollivierre said Best told him, "Everyone in the room is watching to see what you would do."

Upon questioning by the Court, Ollivierre said at no point during or after roll call did he raise his voice when he was in conversation with Respondent.

#### Police Officer Patronel Nath

Nath has been a police officer with the Department for five and a half years and is currently assigned to CAGE.

On November 18, 2009, Nath was at roll call where the exchange occurred between Ollivierre and Respondent. Nath stated that while Ollivierre was conducting roll call, Respondent asked him if there were certain rules that applied to certain people when it comes to making TOS collars. Nath recalled:

He [Ollivierre] told him right now is not the time, he was conducting roll call. [Respondent] stated that he didn't care, he was going to speak his mind. He said that if there is a personal issue - - the sergeant if there is a personal

issue, we can step outside and discuss it, but now is not the time to have that discussion.

She explained that Respondent repeated that he wanted an answer, and said, "he didn't care, and he was going to speak his mind." Nath said Respondent seemed "frustrated," "annoyed" and "angry." Respondent was speaking in a high volume whereas Ollivierre spoke in a low tone. She explained that she was surprised at the entire situation that occurred at roll call and felt Respondent was wrong. Nath stated Ollivierre was five seats away from Respondent when the exchange occurred and Ollivierre never moved toward him during the exchange. Ollivierre remained in the same location throughout his exchange with Respondent, and Ollivierre never opened up the floor to questions. Nath said Respondent was sitting prior to the moment he asked Ollivierre his question.

During cross-examination, Nath admitted that she was appointed to the Department in January 2007 and was in CAGE for about a year when the roll call incident between Respondent and Ollivierre occurred. She agreed that there were several people at roll call, including her partner, then-Police Officer Osbert Boakye, who she had worked with since graduating from the Police Academy. Nath acknowledged that she and Boakye were the junior officers in CAGE and Ollivierre was already in the unit before she was assigned there. She was unsure how long Ollivierre had been assigned to the unit. Nath agreed that most of the officers present at roll call had been in CAGE for some time. Nath acknowledged she had worked with all of the officers in CAGE, including Respondent, on more than one occasion but it would be uncommon not to work with her steady partner.

When the incident took place between Respondent and Ollivierre, Nath admitted nobody else was yelling or screaming inside the room and no civilian members of the

service were present. Nath agreed Respondent said to Ollivierre, during the roll call, “We all know who your favorites are.” Nath acknowledged Respondent was referring to herself and Boakye when he said that to Ollivierre.

During questioning by the Court, Nath said she and the officers present at roll call were seated at desks that were about a foot apart. They were not spread out. Ollivierre was standing no more than five feet from where everybody was seated. She explained that the desks were all facing one another, and were in very close proximity with two officers at each desk. Nath explained that Respondent did not stand up from the desk when he addressed Ollivierre.

During recross-examination, Nath explained that Best was sitting to her left and Respondent and Adrien were to her right. Nath acknowledged that she did not recall if there were officers in between Ollivierre and where Respondent was sitting for roll call.

#### Osbert Boakye

Boakye worked for the Department for five years and was a police officer assigned to CAGE. He is currently a police officer with the Albany Police Department.

On November 18, 2009, Boakye was present when Respondent disrupted the roll call which Ollivierre was conducting. Boakye stated Respondent “wanted to speak his mind about certain criteria with the unit.” During the interruption, Boakye said Ollivierre was very calm, but shocked. Ollivierre told Respondent that if he wanted to talk about it, they could talk after roll call, or talk outside. Boakye explained that Respondent continued to state his opinion about what was going on in the unit, “He d[id]n’t care, he wanted to put his opinion out, find out what’s the criteria. Like he wanted to know what

was going on. People in the unit are scared to speak up.” Boakye said Respondent made a statement at the roll call that Ollivierre had favorites in the unit. During the exchange, Boakye described Respondent’s tone of voice as “aggravated” and “loud.” Boakye explained Ollivierre’s tone during the exchange was calm while he was trying to redirect Respondent that they can talk after roll call. Boakye described the roll call room as an office with five desks which had an office in the back of the room for the sergeants and lieutenants. According to Boakye, during the roll call Ollivierre was five to eight feet in front of the desk where Respondent was located. Ollivierre did not move during the exchange with Respondent and was giving out assignments prior to getting interrupted. Ollivierre did not open up the floor for questions before being interrupted and Respondent did not make any hand movements prior to speaking.

During cross-examination, Boakye admitted he was sitting in the corner of the roll call room about ten feet away from Ollivierre. Boakye acknowledged everyone else present at roll call were within ten feet of Ollivierre and Respondent when the exchange between them occurred. Boakye agreed Nath was his partner at the time and they had previously worked together with Ollivierre, who was their supervisor when they were assigned to Impact. Boakye admitted Ollivierre was already in CAGE before he was transferred there. Boakye acknowledged that Ollivierre “specifically” asked if he and Nath were interested in transferring to CAGE and he had responded in the affirmative.

#### Respondent’s Case

Respondent called Police Officers Neville Salmon, Viola Adrien, Juan Aquino, Pedro Pena, and Juan Vazquez as witnesses. Respondent testified in his own behalf.



Police Officer Neville Salmon

Salmon was appointed to the Department in July 2004 and is currently assigned to CAGE. On November 18, 2009, Salmon was present for the roll call and, at the time, had been assigned to CAGE for approximately two weeks. Salmon said there were ten people, including Respondent, at the roll call which Ollivierre was conducting. Salmon stated he had never worked with Ollivierre. He testified that during roll call Respondent did not do anything, but at the end, Respondent raised his hand and inquired, "Was only certain people supposed to follow the rule of arresting people for theft of service." At that point, Ollivierre might have said something but Salmon was unsure what his reply was. Salmon was 15 to 20 feet away from Ollivierre when the question was asked and Respondent spoke in a calm voice while sitting in a chair. He did not remember Ollivierre's initial response to the question, but did remember Ollivierre saying, "You have to be f'ing kidding me." Salmon confirmed all the officers were present in the room when Ollivierre said "you have to be fucking kidding me." The interaction between Ollivierre and Respondent lasted approximately five to eight minutes. At the end, Ollivierre sent everybody out to patrol and nothing else was brought up about it during the day.

During cross-examination, Salmon acknowledged that Respondent raised his hand before speaking and Ollivierre asked if anybody had any questions after roll call. Salmon admitted he was not sure what was said after Respondent raised his hand. Initially, Salmon agreed Respondent and Ollivierre were calm, and he disputed the idea that Respondent became upset. Salmon acknowledged that Respondent did not get loud or upset because Ollivierre did most of the talking. During an official Department

interview, Salmon admitted the demeanor between Respondent and Ollivierre was calm in the beginning, but both became upset after the conversation went on. Salmon did not recall making that statement during the interview, but said maybe he did. After Ollivierre replied to Respondent, Salmon did not recall Respondent saying anything but did recall Ollivierre getting a little upset. Salmon did not recall if Respondent repeated his question a second time. Salmon agreed Ollivierre was sitting at his desk during the exchange but did eventually stand up. Ollivierre did not approach Respondent who remained seated during the exchange. Salmon admitted he was not worried Ollivierre was going to approach and physically harm Respondent.

Police Officer Viola Adrien

Adrien has been a police officer with the Department for over 14 years and is currently assigned to the Transit Bureau Special Operations District Bus Unit. In November 2009 Adrien was assigned to CAGE. On November 18, 2009, Adrien was present at the roll call which Ollivierre was conducting with around eight other officers, including Respondent.

Adrien stated Respondent did not say anything while roll call was being conducted. After roll call, Ollivierre asked if anybody had a question, and, at that time, Respondent raised his hand and asked a question about TOS collars. Adrien described the tone of Respondent's voice as "very" calm when he asked the question. When the question was asked by Respondent, Ollivierre became "a little agitated" and "angry." Ollivierre started yelling and screaming because he did not like the question. Adrien said Ollivierre was five to ten feet away from Respondent when he started yelling, and

Respondent remained seated at his desk the whole time. While Ollivierre was yelling, Respondent "just kept saying I just wanted for him to clarify what it is he wants him to do." Adrien testified that Respondent was asking about something that had been discussed at roll call the day before. Adrien said Respondent was not acting discourteous toward a superior officer and all he did was ask a question about something that was spoken about at roll call on the previous day. Adrien stated Respondent did not use any profanity toward Ollivierre.

During cross-examination, Adrien admitted at first Ollivierre started answering the question from Respondent in a calm manner, then became louder as he continued. Adrien was unsure if Ollivierre said that the age of perpetrators is one factor regarding when TOS arrests go through the system. Ollivierre did not answer Respondent's initial question because he was just screaming. Ollivierre did not answer Respondent's question, and the only thing Respondent did was try to get an answer to his question. With Ollivierre becoming angry and loud, Respondent asked a follow-up question because "he just wanted to clarify what it is that he is supposed to do so he knows how to do his job."

Adrien agreed Ollivierre was five to ten feet away from Respondent at the beginning of the exchange. As the exchange continued, Ollivierre was screaming and yelling while walking toward Respondent who was sitting at his desk. As a result of Ollivierre approaching him, Respondent then stood up. Adrien described the situation, "The sergeant was screaming, he walked right in front of the desk where [Respondent] was sitting up, at that point he stood up. At some point, he stood up." Adrien admitted

Respondent stood up while Ollivierre was speaking, and the chair Respondent was sitting in did not cause any noise when he got up.

Adrien acknowledged that if she were in Respondent's position with Ollivierre approaching her, she would have been afraid Ollivierre would have struck her or engaged in a physical altercation. She did not remember if any officers tried to restrain Ollivierre while he was approaching Respondent. She did not attempt to restrain Ollivierre while he was approaching Respondent. She did not report the incident between Ollivierre and Respondent to a superior officer or file a complaint with the Internal Affairs Bureau (IAB). Adrien admitted she did not remember if Respondent raised his hands in a defensive posture when Ollivierre approached him.

During questioning by the Court, Adrien stated Ollivierre would give out assignments, and then he would ask if anybody had any questions. Adrien did not recall if anyone else had a question because things became loud between Respondent and Ollivierre, and everybody went straight out without saying anything after the incident.

When asked about the substance of Respondent's question, Adrien stated:

Well, the question he was asking, there was a TOS collar that was made the day before, and I guess him and his partner had a TOS collar that they weren't allowed to put through, to keep, because the person's age difference, or something like that. So he wanted to know is the age group this or that, which one is the age group. What's the age group with the TOS collar you want me to make. That's the question he was trying to ask.

Adrien acknowledged as far as she knew, when he left roll call, Respondent's question was not answered.

Police Officer Juan Aquino

Aquino has been with the Department for eight years and has been assigned to his current command, CAGE, for seven years.

On November 18, 2009, Aquino testified, at the conclusion of roll call, Respondent raised his hand and asked Ollivierre a question on arrest procedure. Ollivierre responded to the question by saying, "You've got to be fucking kidding me" in an agitated manner. Aquino explained Ollivierre was annoyed by the questioning and responded by saying, "It's not the right time to ask that question." Ollivierre proceeded on for five to six minutes after Respondent asked his question. Aquino said Respondent did not say anything to Ollivierre when he made his "You've got to be fucking kidding me" comment.

During the exchange between Respondent and Ollivierre, Aquino explained, the only other comment Respondent made to Ollivierre was, "If I have a question, I am going to ask a question that needs to be answered." Aquino was unsure what Ollivierre's response was to that question and Respondent was seated at his desk during the entire exchange. Aquino said Ollivierre was standing by his desk when the incident started. He testified Respondent was not acting discourteously toward Ollivierre by sitting down during roll call because when roll call was conducted, it was common to sit down in chairs when assignments were given out. He did not think Respondent asked a question that was discourteous. During the six-minute exchange, Aquino explained he did not see Respondent make any body movements or gestures that were discourteous toward Ollivierre.

Aquino testified that the incident ended after Ollivierre finished venting and everybody left the office to go to their assignments. Respondent's statement to Ollivierre, "If I have a question, I am going to ask the question," was said in the middle of the exchange between them. He did not remember Respondent using profanity during the exchange with Ollivierre.

During cross-examination, Aquino agreed that CAGE is a relatively small unit that presently has five officers and had about ten officers on the date of the incident. He admitted he has socialized with Respondent while off duty but has never socialized with Ollivierre in any situation other than where the entire unit had been invited.

Aquino acknowledged that before the aforementioned roll call, he spoke with Respondent, who mentioned he was going to ask Ollivierre a question pertaining to TOS arrests. After Respondent asked the question, Ollivierre immediately became agitated. Ollivierre was not calm after the question was asked and at a certain point, he started to approach Respondent. Aquino acknowledged he was not afraid of Ollivierre striking Respondent because he did not think it would get to that point. Aquino agreed, based on his observation, he saw Ollivierre approach Respondent in a somewhat hostile manner. Aquino never had a concern for Respondent's safety because he did not think Ollivierre was going to strike him. Aquino explained Ollivierre's actions:

Like I said, he approached [Respondent] in a hostile manner, but the thought of him striking [Respondent] never really crossed my mind. If I thought he was going to strike [Respondent], I think I probably would have got up to restrain him so it wouldn't get that far. That thought never really crossed my mind.

Aquino agreed that everybody who was present at roll call, including himself, were questioned by the ICO about the events that occurred that day. Aquino

acknowledged that one of the most important incidents that occurred at roll call was when Ollivierre approached Respondent in an aggressive manner. He did not remember if he told the ICO in his official Department interview about how Ollivierre approached Respondent because that question was never posed to him. He explained that the ICO asked pointed questions which he answered. Aquino acknowledged that Ollivierre stated to Respondent that his question should have been brought up at a different time. During the exchange, Respondent remained seated and stood up after it was over and Ollivierre had stopped speaking. When Ollivierre approached Respondent, he was standing over him, about two to three feet away from him. Aquino denied Respondent started speaking after just raising his hand. Aquino said Respondent raised his hand and Ollivierre acknowledged him and asked him what he needed. Aquino could not remember if Respondent repeated his question after Ollivierre initially started speaking.

During questioning by the Court, Aquino could not remember if Respondent mentioned anything about “favorites” to Ollivierre during their exchange, but did acknowledge it might have come up because it was an underlying factor in the question being asked in the first place, as Ollivierre had allowed certain officers to make TOS arrests while another team the day after was not allowed to process that kind of arrest. Aquino said Ollivierre allowed officers he favored to make certain arrests whereas other officers were not allowed to do the same. Aquino said the whole unit wanted clarification over when or who was allowed to make TOS arrests and Respondent was the person who stepped up to ask the question. Aquino acknowledged sometimes there are restrictions on the age of a person and when to arrest a person for TOS. Aquino admitted to being told to stay away from TOS arrests so they could patrol the trains, but once after

school dismissal was finished, Aquino said they were allowed to arrest. Aquino explained that the majority of the unit wanted clarification from Ollivierre on when they could arrest being that his “favorites” were allowed to process an arrest the day after he denied another team from doing the same thing.

During redirect examination, Aquino said there is financial gain for making an arrest as compared to issuing a summons, because if the arrest is made toward the end of your tour you will probably incur overtime. If an arrest is made early in your tour, Aquino stated, you will benefit by going home on time.

During questioning by the Court, Aquino said he probably worked a 10:35 a.m. to 7:00 p.m. tour on the day in question. From 2:00 p.m. to 4:00 p.m. he was normally assigned to school conditions. After 4:00 p.m., he said they would still patrol trains up to 6:15 p.m. while riding a train back to the command.

Police Officer Pedro Pena

Pena has been with the Department for eight years and has been assigned to CAGE for the last four years.

On November 18, 2009, Pena was present for the roll call conducted by Ollivierre. After roll call was completed, the unit was asked if they had any questions. Respondent proceeded to raise his hand. Respondent asked Ollivierre about a TOS arrest made by two other officers and he wanted to know what was allowed and disallowed. Pena testified Ollivierre became “irate” at the question, creating an uncomfortable environment which included a lot of yelling and profanity being used by Ollivierre. Pena described Respondent’s demeanor as “calm” during the interaction and he was sitting



down allowing Ollivierre to speak. Pena could not recall Respondent displaying any body motions nor saying anything that could be interpreted as discourtesy toward a supervisor. The interaction between Respondent and Ollivierre lasted three to five minutes with Ollivierre doing the talking. Pena stated everyone assigned to CAGE was present for roll call during the incident.

During cross-examination, Pena agreed that CAGE is a relatively small unit. Pena acknowledged he has socialized with Respondent and Ollivierre while off duty, while noting he socialized with Ollivierre only at holiday parties when the entire unit attended. Pena admitted that prior to the incident Ollivierre had a good relationship with Respondent and Vazquez, and they were both able to get plenty of overtime.

Pena agreed that before the incident in question, he spoke with Respondent before roll call and was informed by him that he was going to raise the TOS issue at roll call. Pena acknowledged that when Respondent asked the question Ollivierre was calm at first, then became agitated. Pena explained Ollivierre was conducting roll call then asked if anybody had any questions. At that time, Pena agreed, Respondent raised his hand and asked the question which Ollivierre did not like. Ollivierre became "very angry." When the question was initially asked, Ollivierre was by his desk on Pena's right. While the interaction was going on, Ollivierre started pacing parallel to where Respondent and the other officers were sitting. Pena did not remember Ollivierre approaching Respondent or getting in his face.

Pena admitted Respondent remained seated throughout the time Ollivierre was speaking. He did not recall Ollivierre saying that the question Respondent asked should have been addressed at a different time. Once Ollivierre started to respond to

Respondent's question, he did not remember Respondent say anything at a later point in the interaction. Pena acknowledged that once Ollivierre became upset, he did not want to be there and he was not paying attention to what was said. Pena admitted Ollivierre became upset after the question was asked.

During questioning by the Court, Pena described roll call as being conducted in a friendly environment with no animosity amongst Ollivierre and the officers. Roll call was completed and assignments were given out prior to the time Ollivierre asked if anyone had any questions. At no given time did Respondent disrupt roll call and said Respondent raised his hand when Ollivierre asked if anybody had any questions.

Police Officer Juan Vazquez

Vazquez was appointed to the Department in April 1997 and is currently assigned to CAGE, where he has worked for approximately four years.

On November 18, 2009, Vazquez was present for the roll call at issue. Once Ollivierre was finished with the roll call, Respondent raised his hand and asked him a question. Ollivierre looked at Respondent and entertained his question. Respondent did not interrupt roll call or do anything that was discourteous while Ollivierre was conducting roll call. Once the question was asked by Respondent, Vazquez testified, Ollivierre's response was basically, "I'm the fucking sergeant, don't tell me how to fucking run my unit." Vazquez explained Ollivierre's tone of voice as "loud" and "boisterous."

At this time, Vazquez said, Ollivierre was yelling and approaching Respondent in a way which he thought a physical altercation might happen between them. The whole

time this was happening, Respondent remained seated and never got up. Vazquez testified Respondent did not do anything that could be perceived to be an act of discourtesy toward Ollivierre in the roll call room. Vazquez explained Respondent asked a question and Ollivierre started yelling and screaming. According to Vazquez, he did not remember Respondent using profane language during his interaction with Ollivierre. The interaction between Respondent and Ollivierre lasted about five minutes. Vazquez said that after the interaction, everyone went to take their assignments and Respondent did not act in a discourteous way toward Ollivierre while leaving the roll call area.

During cross-examination, Vazquez admitted he was Respondent's partner in CAGE from January 2009 up until the altercation he had with Ollivierre. He did not have a falling out with Respondent, but was separated from working with him. In January 2010, Vazquez transferred to the MetroCard Unit. Respondent soon transferred to the MetroCard Unit as well and they began working as partners again. Vazquez agreed he has sometimes socialized with Respondent after work.

Vazquez could not recall if Ollivierre opened up the floor for questions at roll call on November 18, 2009. After roll call was finished, Vazquez could not remember if Ollivierre was walking towards his desk or facing Respondent. Vazquez acknowledged by reading a transcript from his official Department interview, Ollivierre was walking towards his desk when Respondent raised his hand. Vazquez disputed the notion that Ollivierre was not looking at Respondent when he raised his hand. Vazquez explained:

Well, I can't tell you if he was looking at him or not. You know, I was there, but I can't tell you if he was actually looking at him or not, you know, but what I can tell you is that the angle where his desk is at, whether he has peripheral vision or not, you can see where [Respondent] is.

Vazquez agreed Respondent was not in Ollivierre's direct line of sight. Respondent said, "I have a question" and Ollivierre entertained the question. Vazquez could not recall if, after Respondent raised his hand, Ollivierre acknowledged him. Ollivierre immediately became upset after Respondent asked his question and started to approach Respondent as if things were going to get physical. Vazquez did not recall if any other officers made movements to restrain Ollivierre. Respondent remained seated. Vazquez agreed he thought Respondent was about to be struck by Ollivierre, but admitted he never notified a superior officer in the command, never called IAB to report the incident and did not document it anywhere.

Vazquez acknowledged that Respondent asked a question related to when TOS arrests are allowed. Two days prior to the roll call incident, Vazquez had made a TOS arrest but Ollivierre had told him to issue a summons rather than put the person through the system. Vazquez admitted CAGE was a detail looking for gang-related activity. He was generally told to focus on perpetrators who looked like they are in their teens or 20s. After being shown a copy of a summons that Ollivierre directed him to issue to a person rather than process as an arrest, Vazquez agreed the date of birth of the perpetrator was in 1964.

Upon questioning by the Court, Vazquez said if a crime is committed while at a certain station he would take appropriate police action and run names for warrants. In the particular case with the perpetrator born in 1964, Vazquez explained this person did not meet the criteria for a summons. Vazquez noted the person was a "robbery recidivist."

Respondent

Respondent has been with the Department for 14 years and is currently assigned to the MetroCard Task Force. Prior to that, Respondent was assigned to CAGE for ten years.

On November 18, 2009, Respondent was present for roll call, along with: Adrien Pena, Aquino, Nath, Boakye, Salmon and Best. The supervisor conducting roll call was Ollivierre. Respondent said he did not ask Ollivierre anything or interrupt while he was conducting roll call. After roll call was conducted, Respondent stated, Ollivierre always asked if anybody had any questions. At that time, Respondent raised his hand and asked Ollivierre, "Does TOS arrests only pertain to certain officers and not others."

Respondent testified he was sitting at his desk at the time and Ollivierre was 10 to 15 feet away from him. Ollivierre responded to his question by saying, "Are you fucking kidding me. I'm the fucking sergeant. I do what I want to do." He remained seated when Ollivierre responded to his question. Respondent said Ollivierre had been his immediate supervisor for approximately a year at the time. After the initial response, Respondent stated, Ollivierre continued screaming in a loud tone of voice and said, "I'm the boss. I do what I want to do," and that Respondent was "nobody to tell him what to do."

Respondent said the only additional comment he asked Ollivierre was if he could answer his question. Respondent testified that he did not try to talk over Ollivierre when he asked the second question, and may have raised his voice by a little. The interaction between them lasted five to seven minutes and at no point did he get an answer to his question. After roll call he asked Ollivierre if rules for TOS arrests only applied to

certain police officers. Respondent clarified that the certain police officers he was referring to were Nath and Boakye. Two days preceding the roll call, he was made aware of Nath and Boakye being treated differently while making a TOS arrest. Respondent stated when Ollivierre was screaming at him he also approached him and stopped. Respondent explained Ollivierre never answered his question. Throughout the entire time Ollivierre was screaming, Respondent said he remained seated. Respondent stated he got up from his seat when the room became quiet and Ollivierre said to go on patrol. Respondent explained that he did not see Ollivierre for the rest of the day and did not use any profane language while talking to him. He was never discourteous toward Ollivierre when he asked the question after roll call.

During cross-examination, Respondent agreed that after asking the question, Ollivierre immediately started screaming at him and stated, "I'm the fucking sergeant, you are not to ask the questions." Ollivierre walked over toward him and got in his face. Ollivierre was within five feet of him and was still screaming at him. Respondent denied he was in fear for his safety, but did say Ollivierre was standing hunched over him while he remained seated. Respondent did not recall if any of Ollivierre's spit got on him. With Ollivierre screaming at him and standing hunched over him, Respondent admitted he stated his question again because he wanted an answer. Respondent agreed Ollivierre never answered his question.

Respondent said he does not base arrests on looks but on dates of birth, being that people could look younger than they actually are. Respondent acknowledged Ollivierre stated to him that the perpetrator Nath and Boakye arrested looked younger. Ollivierre never said to him that this should be addressed after roll call or at a different time.

Respondent agreed he was put into uniform the day after the incident and considered that an informal punishment. Respondent acknowledged that Ollivierre never addressed what occurred at that prior roll call and had denied Respondent overtime that weekend.

Respondent admitted Ollivierre gave him a "4.5" on his evaluation during the year of the roll call incident and received the same evaluation the following year. Respondent agreed he was angry at how Ollivierre yelled at him along with his response to his question. Respondent acknowledged even though he was angry he did not show it.

### FINDINGS AND ANALYSIS

Respondent stands charged herein in the sole specification in that on or about November 18, 2009, at approximately 11:15 a.m., while in the Transit Bureau, Special Operations District-Citywide Anti-Gang Enforcement Unit's roll call room, Respondent was discourteous to Sergeant Special Assignment Nimrod Ollivierre. The Department presented two witnesses, Nath and Boakye, whose testimony were essentially the same; that Respondent interrupted roll call with a question, that Ollivierre told him to address it outside or later, and that Respondent said in sum and substance, "I have a question and I want it answered."

Conversely, Respondent presented five witnesses to refute the charge against him. Salmon, Adrien, Aquino, Pena and Vazquez, whose testimony was essentially the same, i.e., that Ollivierre conducted roll call, that he gave out assignments, instructed the officers and completed roll call. After roll call, he asked if anyone had any questions and Respondent raised his hand and asked a question. Adrien said Ollivierre became agitated and started to scream as a result of Respondent's question. Aquino said after Ollivierre

finished “venting” and everyone received their assignments, everyone left the room.

Salmon said the exchange between Respondent and Ollivierre lasted between five and eight minutes. Pena and Vazquez said Respondent was calm but Ollivierre became agitated and spewed profanity.

Based on these two accounts, it would seem that some witnesses are not being truthful. It is really a matter of understanding that the truth lies somewhere in the middle. What this Court is faced with is whether Respondent was discourteous to Sergeant Ollivierre sometime around roll call.

Respondent testified that after roll call was completed, he raised his hand to ask a question. He said his question was in sum and substance, “Does theft of service arrests pertain to certain officers and not others?” There was some colloquy by witnesses presented by both the Department and Respondent that noted that Respondent referred to favoritism by the sergeant for the officers who were able to process a theft of service arrest and not for the officer who was not able to process the theft of service arrest, but was directed to issue a summons. This leads the Court to believe that there was some back and forth between the sergeant and Respondent. Respondent testified in a stoic manner when he appeared before this Court. He testified that he asked his question, and after the sergeant went ballistic and “walked to him” and was aggressive, he [Respondent] repeated the question. That alone is enough to say, Respondent’s demeanor was objectionable. If his question caused the sergeant to become irate and angry, repeating it in the same manner would not cause him to settle down. Also, there appeared to have been more of an exchange between them than most of Respondent’s witnesses could recall, because everyone said the incident went on anywhere from three to eight



minutes. Even Aquino acknowledged that at one point Respondent said, "If I have a question, I am going to ask a question that needs to be answered."

What was gleaned from this testimony was that it was not so much the question that was asked, but the tone in which it was raised, and the fact that it was done in front of the entire command almost in a way to embarrass the sergeant. In addition, by Respondent's own account, when Ollivierre became upset, angry and somewhat confrontational with him, Respondent repeated the question and demanded that he wanted an answer to his question.

This is discourtesy. Respondent did not have to utter any profanity for his tone and demeanor with the sergeant to be considered discourteous, particularly in the presence of other members of the service at the time of roll call. And for Respondent to demand an answer to his question in front of the entire command, rather than speak to Ollivierre privately makes his conduct objectionable.

Accordingly, Respondent is found Guilty.

#### PENALTY

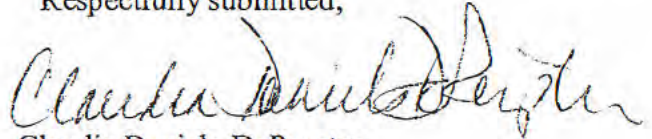
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

Respondent was appointed to the Department on August 31, 1998. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has been found Guilty of being discourteous to his sergeant in the roll call room in front of fellow members of the service. The Assistant Department Advocate asked for a penalty of the forfeiture of ten vacation days.

Accordingly, it is recommended that Respondent forfeit ten vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster  
Assistant Deputy Commissioner Trials



**APPROVED**  
FEB 19 2013  
RAYMOND W. KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

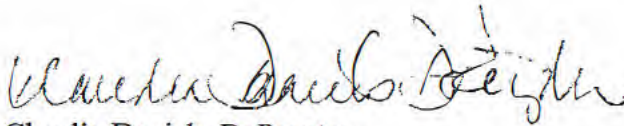
From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER MARIO LORA  
TAX REGISTRY NO. 922666  
DISCIPLINARY CASE NO. 2010-2021

In 2011, Respondent received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. In 2009 and 2010, Respondent received a rating of 4.5 “Above Highly Competent.” Respondent has not received any medals in his career to date.

[REDACTED]

Respondent has no prior formal disciplinary record.

For your consideration.

  
Claudia Daniels-DePeyster  
Assistant Deputy Commissioner – Trials